

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

EDWARD EUGENE GARNER,

Plaintiff,

v.

JAMES COX, *et al.*,

Defendants.

Case No. 2:15-cv-02430-JCM-CWH

ORDER

Petitioner has submitted an application to proceed *in forma pauperis* (Doc. #1) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court finds that petitioner is unable to pay the filing fee.

Petitioner has filed a motion for appointment of counsel (Doc. #3). Petitioner is unable to afford counsel, and the issues presented warrant the appointment of counsel. *See* 18 U.S.C. § 3006A(a)(2)(B).

Petitioner has filed a motion for an evidentiary hearing (Doc. #2). This motion is moot because the court is appointing counsel, who will be filing an amended petition.

IT IS THEREFORE ORDERED that the application to proceed *in forma pauperis* (Doc. #1) is GRANTED. Petitioner need not pay the filing fee of five dollars (\$5.00).

IT IS FURTHER ORDERED that the clerk of the court shall file the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

1 IT IS FURTHER ORDERED that the motion for an evidentiary hearing (Doc. #2) is
2 DENIED as moot.

3 IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel (Doc.
4 #3) is GRANTED. The Federal Public Defender is provisionally appointed to represent petitioner.

5 IT IS FURTHER ORDERED that the Federal Public Defender shall have thirty (30) days
6 from the date that this order is entered to undertake direct representation of petitioner or to indicate
7 to the court his inability to represent petitioner in these proceedings. If the Federal Public Defender
8 does undertake representation of petitioner, he shall then have sixty (60) days to file an amended
9 petition for a writ of habeas corpus. If the Federal Public Defender is unable to represent petitioner,
10 then the court shall appoint alternate counsel.


11 IT IS FURTHER ORDERED that neither the foregoing deadline nor any extension thereof
12 signifies or will signify any implied finding of a basis for tolling during the time period established.
13 Petitioner at all times remains responsible for calculating the running of the federal limitation
14 period under 28 U.S.C. § 2244(d)(1) and timely asserting claims.

15 IT IS FURTHER ORDERED that the clerk shall add Adam Paul Laxalt, Attorney General
16 for the State of Nevada, as counsel for respondents.

17 IT IS FURTHER ORDERED that the clerk shall electronically serve both the Attorney
18 General of the State of Nevada and the Federal Public Defender a copy of the petition and a copy
19 of this order.

20 IT IS FURTHER ORDERED that respondents' counsel shall enter a notice of appearance
21 within twenty (20) days of entry of this order, but no further response shall be required from
22 respondents until further order of the court.

23 DATED THIS 26th day of April 2016.

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25 
26 JAMES C. MAHAN
27 UNITED STATES DISTRICT JUDGE
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